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In re Application of :
MASTERS et al. :
Serial No.: 09/889,034 :
PCT No.: PCT/US99/30707 : DECISION ON PETITION
Int. Filing Date: 22 December 1999 :
Priority Date: 22 December 1998 : UNDER 37 CFR 1.181
Attorney's Docket No.: UTSK:336US :
For: STRUCTURAL BASIS FOR PTERIN FUNCTION :
IN NITRIC OXIDE SYNTHASE :

This is a decision on applicants' "Petition to Revive Unintentionally Abandoned Application Pursuant to 37 CFR 1.137(b)" in the above referenced application. The petition, filed on 16 July 2002 in the United States Patent and Trademark Office (USPTO), is being treated as a petition under 37 CFR 1.181 to accept a copy of the response to the Notification of Missing Requirements, in lieu of the original response filed in the USPTO on 13 May 2002. No petition fee is required.

BACKGROUND

On 28 September 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that the oath or declaration, in compliance with 37 CFR 1.497(a) and (b) was required. The notice set a two month period for reply or until 28 November 2001. Extensions of time were available under the provisions of 37 CFR 1.136(a).

On 30 May 2002, after the period within which to respond to the Form 905 had expired, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants indicating that applicants had failed to respond to the Notification of Missing Requirements and that the application was considered abandoned.

On 16 July 2002, applicants responded to the Notification of Abandonment with the instant petition to revive the abandoned application along with a copy of applicants' 13 May 2002 Response to Notification of Missing Requirements, including a request for a five month

extension of time, four declarations executed by the inventors and an itemized USPTO date-stamped receipt. The Response to Notification of Missing Requirements was mailed via first class mail, with a certificate of mailing dated 26 April 2002.

DISCUSSION

A review of the application file reveals that the original Transmittal Letter filed with the Response and associated papers are not contained therein. A review of the finance records reveals that the surcharge for filing the declaration after the thirty month period along with the fee for a five month extension of time had been paid.

To prove the timely filing of the declarations in response to the Notification of Missing Requirements, counsel has provided an itemized receipt, bearing an official USPTO date-stamp "Rec'd PCT/PTO 13 MAY 2002". The itemized receipt letter indicates the submission of a response to an Office action including four declarations for 09/889,034, a request for an extension of time and a Certificate of Mailing, which accompanied the response.

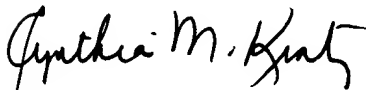
The evidence submitted is sufficient to establish that the declarations for this application were received in the USPTO on 13 May 2002. Accordingly, it is appropriate to accept the copy of the declarations submitted on 16 July 2002 as a replacement for the missing original declarations with a deposit date of 13 May 2002.

The date on the Certificate of Mailing, 26 April 2002, is within the period of reply and is considered to be timely. See MPEP §512, p. 500-55. The request for a five (5) month extension of time is granted, as the response was filed with a Certificate of Mailing dated 26 April 2002, almost five months after the period of time within which to respond as set forth in the Notification had expired.

CONCLUSION

For the reasons stated above, the petition under 37 CFR 1.181 filed 16 July 2002 in the above-captioned application is GRANTED.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing. The 35 U.S.C. 371(c) date is **13 May 2002**.



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